IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUIT NO.1723 OF 1978

The Century Spinning and Manufacturing Co.Ltd. ...Plaintiff.
Vs.
Oriental Fire and General Insurance Co. & Ors. ...Defendants.
....
Mr. M. L. Bansal for the Plaintiff.
Mr.E. P. Bharucha, Senior Advocate with Mr. C.E. Bharucha and Ms. Brotin Das i/b. Gagrats for the Defendants.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.
May 4, 2007.

JUDGMENT :

The Plaintiff which is a Public Limited Company, registered under the Companies' Act, 1913, owns and runs three Divisions known as (i) Century Rayon Division, (ii) Century Rayon Tyrecord Division and (iii) Century Chemicals. All the three Divisions are situated at Murbad Road, Kalyan. The Defendants are companies which carry on General Insurance business. Between the period 1st January 1977 and 1st January 1978, the Plaintiff obtained seven Insurance Policies from the Defendants, namely:

a) Policy No.1110/0/0/F/2126 (inter alia covering the building, machinery and accessories of the Rayon division);

b) Policy No.1110/0/0/F/2128 (inter alia covering the stock and stock-in-process of the Rayon division;

c) Policy No.1110/0/0/F/2129 (inter alia covering the building, machinery and accessories of the Tyrecord division;

d) Policy No.1110/0/0/F/2131 (inter alia covering the stock and stock-in-process of the Tyrecord division;

e) Policy No.1110/0/0/F/2132 (inter alia covering the building, machinery and accessories of the Chemicals division;

f) Policy No.1110/0/0/F/2134 (inter alia covering the stock and stock-in-process of the Chemicals division;

g) Policy No.1110/0/0/F/2135 (inter alia giving consequential loss insurance cover to the Plaintiff in respect of all its aforesaid three divisions).

The first six policies are described collectively as policies of Fire Insurance, but they have been extended to cover a risk of loss and damage caused by riot and strike,malicious damage and explosion. The seventh policy is a policy to cover consequential loss. For the relevant period, the Plaintiff paid an amount of Rs. 11.44 lakhs towards the premium, the total sum insured being in the amount of Rs. 69.15 lakhs.

2. The claim of the Plaintiff is that prior to 4th April 1977,

there was a situation of labour unrest within and outside the Factory. On 4th April 1977, an agitation took place by the workmen within the premises of the factory at Kalyan. The agitating workers surrounded and damaged the car of the President of the Plaintiff and demanded that the Senior Vice President be handed over to the crowd. The Plaintiff had an apprehension that the riot would spread occasioning wide spread damage. The management of the Plaintiff declared a lockout at the end of the second shift, from 11 p.m. on 4th April 1977 in all the three Divisions. A notice of lockout was published. The notice stipulated that Departments concerned with essential services such as the Power House, Pump House and Water Treatment would continue to work as usual. Moreover, in order to salvage the work in progress and the finished goods, the Viscose, Spinbath, Spinning and After Treatment Departments were to be partially operated. The case of the Plaintiff is that despite the notice of lockout, the workmen remained within the factory premises till 2 a.m. on 5th April 1977. The workers were alleged to have stopped work in protest against the lockout until eventually they left the premises with the assistance of the Police. While leaving the factory premises, the workmen, according to the Plaintiff forced the Supervisory staff, Engineers and Officers as well

as the Canteen employees to leave the factory. The factory remained under lockout until 12th April 1977 when the lockout was lifted on the intervention of the Minister for Labour of the Government of Maharashtra.

3. The case of the Plaintiff is that the workmen of the second shift had been directed that before leaving the plant, they should break the threads and lift the spinning machines to facilitate the bleeding of viscose, in order to avoid the viscose getting 'jammed' in the pipelines/tanks. The workers did not do so which according to the Plaintiff caused the viscose (in the Rayon and Tyrecord Division) in the tanks, pipelines, machinery and accessories to coagulate and solidify. In the Chemical Division, the agitation of the workmen is alleged to have resulted in (i) corrosion due to leakage of chlorine; (ii) leakage of mercury in the cell house; (iii) leakage of freon gas in the refrigeration system; and (iv) decomposition of soda bleach in the hypo plant.

4. The Surveyor of the Defendants, Mehta and Padamsey Pvt. Ltd. submitted a survey report on 30th March 1978 quantifying the losses suffered by the Plaintiff at Rs.2,20,40,126/-.

5. The defence to the claim of the Plaintiff is that the loss falls within an excepted peril and is hence not covered by the seven policies of Insurance. The Defendants' plea is that the loss which the Plaintiff claims to have sustained arose due to a stoppage or cessation of work which is expressly excluded from the purview of the seven Insurance Policies.

6. The following issues arise in the suit:

1. Does this Court have jurisdiction to try and entertain this suit?

2. Do the Plaintiffs prove that they have any cause of action and is the suit maintainable against the Defendants?

3. Are the Plaintiffs entitled to claim for loss or damage under insurance policies which are in favour of Century Rayon (Rayon Division), Century Rayon Tyrecord Division) and Century Chemicals?

4. Do the Plaintiffs prove that there is malicious damage or loss or riot or strike damage or loss of Rs.2,20,40,126/- or of any other sum within the meaning of the said insurance policies?

5. Do the Plaintiffs prove that the alleged loss or damage of Rs.2,20,40,126/- or of Rs.49,26,471/- to the property insured was directly caused by the malicious acts of diverse persons in the case of the first six policies viz., the Material Damage Policies?

6. Do the Plaintiffs prove that the Plaintiffs suffered loss, destruction or damage as alleged or that the same was of Rs.2,20,40,126/- or of Rs.1,71,13,655/- as alleged or at all?

7. Do the Plaintiffs prove that the loss, destruction or damage was directly caused by the malicious acts of diverse persons in the case of the seventh policy i.e. the Consequential Loss Policy?

8. Do the Plaintiffs prove that a sum of Rs.2,20,40,126/- is a debt or that the same became due and payable by the Defendants to the Plaintiffs under the said policies on or from 12th April 1977 or from 1st September 1977?

9. What decree?

10. What order?

7. Each of the issues can now be taken up:

ISSUE NO.1 : Jurisdiction :

8. The Defendants undisputedly carry on business at Mumbai. All the Insurance Policies which are the subject matter of the suit were issued by the Defendants at Mumbai. The claim under the Insurance Policies was to be settled and paid in Mumbai. This Court, therefore, has jurisdiction to entertain and try the suit.

ISSUE No.3:

9. The defence is that the seven Insurance Policies were

not in the name of the Plaintiff, but its respective three Divisions and that consequently the suit was not maintainable. There is no merit in that defence. The three Divisions are administrative units of the Plaintiff and belong to the Plaintiff. The insurance premium was paid by the Plaintiff. The ground that the Insurance Policies were taken in the name of administrative Divisions would, therefore, not be of any relevance.

ISSUES 2, 4, 5, 6, 7 and 8:

10. The first six Insurance Policies have been extended to cover a risk arising out of (i) damage due to riot and strike, (ii) malicious damage and (iii) damage due to explosion. Each of the six Insurance Polices contains a riot and strike endorsement which is attached to and forms a part of the policy. The Special Conditions governing each of those policies are identical. The question of construction which arises in the present case revolves around Special Conditions 5(i)(a) and 5(i)(b) which are as follows:

> "Special Condition 5(i)(a) : "Condition 5: (i) This insurance does not cover:- (a) loss of earnings, loss by delay, loss of market or other consequential or indirect loss or damage of any kind or description whatsoever."
>
> Special Condition 5(i)(b): "Condition 5: (i) This insurance does not cover:- (b) <u>loss or damage resulting from total</u>

> or partial cessation of work or the retarding or interruption or cessation of any process or operation." (emphasis supplied).

The first six Insurance Policies also contain a 'Malicious Damage Risks' Clause which is attached to and forms part of each of those policies. The 'Malicious Damage Risks' Clause is identical and is to the following effect :

> "Malicious Damage Risks' Clause: In consideration of the payment of the sum of Rs..... additional Premium, it is hereby agreed and declared that the insurance under the said RIOT AND STRIKE ENDORSEMENT shall extend to include "MALICIOUS DAMAGE" which for the purpose of this extension shall mean,
>
> "Loss of or damage to the property insured directly caused by the malicious Act of any person (whether or not such act is committed in the course of a disturbance of the Public peace) not being an act amounting to or committed in connection with an occurrence mentioned in Special Condition No.6 of the said Riot and Strike Endorsement.'
>
> 'Loss of or damage to the property insured directly caused by the malicious Act of any person (whether or not such act is committed in the course of a disturbance of the Public peace) not being an act amounting to or committed in connection with an occurrence mentioned in Special Condition No.6 of the said Riot and Strike Endorsement.'
>
> But the Company shall not be liable under this Extension for any loss or damage by fire or explosion nor for any loss or damage arising out of or in the course of burglary, house-breaking, theft or larceny or any attempt thereat or

> caused by any person taking part therein.
>
> PROVIDED ALWAYS that all the Conditions and Provisions of the said RIOT AND STRIKE ENDORSEMENT shall apply to this extension as if they had been incorporated herein." (emphasis supplied).

Hence, the coverage of risk due to Malicious Damage is also subject to Special Condition 5(i) noted above. The riot and strike endorsement excludes loss or damage resulting from a total or partial cessation of work or from retarding, interruption or cessation of any process or operation. The Malicious Damage Risks clause similarly does not cover a loss due to the aforesaid events.

11. The seventh Policy of Insurance also contains a riot and strike endorsement. Condition 5(i)(a) is to the following effect :

> "Special Condition 5(i)(a): "Condition 5:(i) this insurance does not cover:- (a) loss resulting from total or partial cessation of work or the retarding or interruption or cessation of any process or operation other than that arising directly from destruction of or damage to the Premises or the property therein of the insured caused by the perils insured against under this policy."

The seventh Policy similarly contains a Malicious Damage Risks Clause to the following effect :

> "Malicious Damage Risks Clause : In consideration of the payment of the aforementioned additional premium, it is hereby agreed and declared that the term damage as defined under the Riot and Strike Endorsement of this policy shall extend to include MALICIOUS DAMAGE which for the purpose of this extension shall mean:-
>
> Destruction or damage directly caused by the malicious act of any person (whether or not such act is committed in the course of a disturbance of the public peace) not being an act amounting to or committed in connection with an occurrence mentioned in Special Conditions 6 of the Riot and Strike Endorsement of this policy.
>
> But the Company shall not be liable under this extension for loss resulting from fire or explosion nor for any loss arising from or in the course of burglary, house-breaking, theft or larceny or any attempt thereat or caused by any person taking part therein. **Provided always that all the conditions and provisions of the Riot and Strike endorsement of this Policy shall apply to this extension as if they had been incorporation herein.**"

Consequently, loss or damage resulting from a total or partial cessation of work or the retarding, interruption or cessation of any process or operation are excluded from the consequential loss policy as well.

12. The submission of the Plaintiff is that the loss or damage that is alleged to have been sustained was occasioned by an

insured peril. The Defendants submit that the suit must fail because the alleged damage has not been caused by an insured peril but by a risk which was excepted from the Policies of Insurance. In assessing the submissions, it would at the outset be necessary to have regard to the evidence that was adduced at the trial. The first witness who deposed on behalf of the Plaintiff was S.M. Bandekar, a Vice President at the Rayon Plant on the date of the deposition. P.W. 1 deposed to the circumstances in which the Plaintiff declared a lockout with effect from the end of the second shift on 4th April 1977. According to the witness, the workers were informed that before leaving the plant they should break the threads and lift the spinning machines for bleeding the viscose, in order to avoid the viscose solidifying and jamming the pipes and other parts of machines and their accessories. The workers, according to the witness, refused to do so. Moreover, the witness claims that the workmen had prevented the employees in five Departments from working contrary to the instructions in the lockout notice. The management was not able to even partially operate the Viscose Department, Spin Bath Department, Spinning Department and After Treatment Department, as a result of the failure and neglect of the workers to do the requisite work. As a

result of the workers having prevented a proper and planned shut down of the plants, the management alleged that it suffered extensive damage to the plants, machinery, equipment and accessories and to the stock and stock-in-process.

13. The answers elicited during the cross-examination of the witness, demonstrate that (i) The witness had not personally witnessed any worker breaking any machine or equipment in the Tyre Cord Division; (ii) The witness had not personally witnessed the breaking the glass pane of the main door or the assault on Shri Kedia or the damage to the Telephone Operator's Desk, but was informed of those by other workers and by the staff; (iii) Whatever the witness has stated regarding the Rayon Division and Chemical Division was on the basis of the information given and not on the basis of his personal knowledge; (iv) The statement in the affidavit of evidence that the Plaintiff had suffered loss relating to the carbon disulphide (CS2) furnaces was not based on personal knowledge but on information received from his colleagues; (v) Of the 250 workmen in the Tyre Cord Division only about 7 or 8 were “militant”; (vi) The damage which had been caused was because of the workers not carrying out instructions

for the breaking of the threads and lifting of the machines. The witness admits that several material statements in the affidavit in lieu of the Examination-in-Chief were not based on his personal knowledge.

14. The next witness who deposed on behalf of the management was Shri P.M. Singrodia, P. W.2 deposed that on 4th April 1977, the Plaintiff had declared a lockout, that the workers wrongfully remained inside the premises rioted and created a disorder and left the machines running knowing full well that serious damage would be caused. P.W. 2 deposed that damage was caused as the workers did not bleed the viscose from the spinning machines causing the same to solidify within the machines. The workers were alleged to have prevented the operation of the Power House Department, Engine Department and Sanitation Department. In other words, what the workers are stated to have done was to prevent a planned shut down of the plants causing damage thereby to the plants, machinery, equipments, accessories, stock, stock-in-process as well as loss of production, profit and other consequential loss.

15. The cross-examination of P.W. 2 reveals that (i) The witness was not personally present (a) when the workers remained inside the premises of the Plaintiff creating disorder till about 2 a.m. on 5th April 1977 or (b) when workers allegedly left the Department wrongfully leaving machines running or (c) when the workers allegedly acted in combination and compelled closure of diverse plants of the Plaintiff; (ii) The statement of the witness in para 15 of his affidavit of evidence that the workers were acting in combination and purposely did not break the threads and did not lift spinning machines was merely his own inference; and (iii) No attempt was made by the workers to stop or hinder the witness. The witness did not see any worker breaking any machinery and the witness was not present at many of the incidents which have been described in the affidavit. There is merit in the defence, at least to a considerable extent that material parts of the evidence of the witness are merely a result of the witnesses own conjecture or an inference from what was supplied to him by others.

16. The defence examined Shri Virendra Shah, D.W. 1 who was the representative of the Surveyor. D.W. 1 in the course of his evidence stated that the loss caused to the machinery in the Rayon

and Tyre Cord Division was due to coagulation of viscose in the pipe line; that no direct damage has been caused to the machinery as a result of any direct or malicious act of any workmen. There was no direct damage to any machinery or stock-in-process in the Rayon or Tyre Cord Division, on account of any violent, active or over act of workmen. The damage that was caused was according to D.W. 1 on account of viscose remained unattended. Similarly, the damage in the Chemical Department was due to closure of machinery and from gas leakage due to various processes remaining unattended and not due to any overt act of any worker. The Plaintiff had made a claim of loss of profit and increase in the cost of working. This according to D.W. 1 was not consequent upon a direct damage caused due to an active overt act or violent act of the workers. The claim was occasioned on account of damage caused by cessation of work, lockout and/or interruption of process. In the course of his cross-examination, the witness stated that he has personally surveyed the damages suffered by the Plaintiff and the statement in the report that the loss and damage was not due to a direct act on the part of the workers was not merely on the basis of inference, but on a survey conducted.

17. The evidence on the record shows that the loss or damage that was sustained by the Plaintiff was occasioned by a cessation of work or, by a retardation, interruption or cessation of the process or operation. The evidentiary material on the record does not reveal any overt act on the part of the workmen which resulted in damage to the machinery. The damage as it emerges from the evidence of the the Plaintiff's witness, was caused by the workmen refusing to work which lead to the solidification of the viscose. The damage was similarly caused as a result of the workmen having refused to work and not following instructions for planned shut down of the machinery. The perils of loss or damage resulting from a total or partial cessation of work or retarding, interruption or cessation of any process or operation are excepted perils. A loss caused by the cessation of work is expressly excluded from the insured perils in the first six policies as well as in the policy providing for consequential loss. The consequential loss policy contains a further condition that at the time of the happening of the damage, there must be in force an insurance covering the interest of the insured in the property at the premises against such damage and that payment shall have been made or liability admitted therefor under such insurance. The contract of insurance

between the parties did not cover a loss or damage resulting from a total or partial cessation of work or retarding, interruption or cessation of any process or operation. The paltry evidence of an overt act or damage to the machinery is found in the cross-examination of P.W. 2 where he states that he witnessed some spinning machines lying on the shop floor. There is a considerable degree of merit in the submission urged on behalf of the Defendants that this piece of evidence was not found in the affidavit in the Examination-in-Chief of the two witnesses of the Plaintiff and the subsequent cross-examination of the witness shows that no weight can be attached to his bald statement. (Reference in this connection may be made to the questions posed at Sr. Nos.27 to 30 and the answers thereto at page 359 of the compilation).

18. In view of the finding that has been arrived at to the effect that the loss and damage in the present case was not occasioned by an insured peril, the claim in the suit must fail.

19. For the aforesaid reasons, the suit shall have to be dismissed. The suit shall accordingly stand dismissed. The

Plaintiff would be liable to pay the costs of the Defendants.

.....